

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5527 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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BALIBEN WD/O THAKORBHAI DEVJI-BHAI PATEL THRO' SON NANDKISHO  
Versus  
COMMISSIONER OF POLICE  
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Appearance:

MR NM KAPADIA for Petitioner  
MR H.N.SOMPURA, AGP for Respondent-State.

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/08/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 ( hereinafter referred to as " the Act of 1985" ) by the order dated 19-5-2000, passed by the Police Commissioner, Surat, and she has been declared

as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Learned counsel for the petitioner has submitted that the detaining authority has relied upon C.R. No.160/2000 registered at Pandesara Police Station. The statement of PSI N.V. Kalasava was recorded in connection with the said case. However, the same is not placed before the detaining authority and, therefore, the subjective satisfaction of the detaining authority is vitiated. He has further argued that since the copy of the statement of PSI N.V. Kalasava is not supplied to the detenu, there is non communication of the grounds, which has affected the right of the detenu to make effective representation. Over and above, son of the petitioner sent a request letter dated 7-6-2000 to the Secretary, Home Department, whereby the petitioner specifically demanded statement of statements of police personnel regarding C.R.No.821/99 and C.R.No.160/2000 and other documents, but the same have not been supplied to the petitioner till today and, therefore, it affected the right of the petitioner to make effective representation.

4. Learned A.G.P. Mr.H.N.Sompura has drawn attention of this Court to the affidavit in reply filed by the respondent No.1-Commissioner of Police, Surat City, wherein paragraph 16 he has specifically averred as under :

"Before Pandesara Police Station  
C.R.No.160 of 2000 complaint of complainant A.S.I. Shri Chimanbhai Bajiyabhai was stated before P.S.I. Shri N.V.Kalasava, therefore, there is no need of taking the statement of Shri M.V.Kalasava. Also, the complaint before Pnadesara police station C.R.No.196 of 2000 statement of Kailashnath Supadu was not taken and he is not the witness of this case, therefore, there is no question of supply the statement of the same, therefore, the submissions made by the petitioner is not accepted."

5. Relying upon the same, learned A.G.P. Mr. H.N.Sompura has argued that the petitioner is not entitled to get the copy of the statements of the above witnesses.

6. Learned counsel for the petitioner has placed reliance on a decision reported in 1991 (1) G.L.H. 346 Jeeva Veiyapuri Madrasi v. Commissioner of Police, Ahmedabad, and another wherein it is held as under.

" In the affidavit-in-reply it has been stated that the statement of witnesses which were recorded by the investigation agency were not considered to be relevant or material for the purpose of being satisfied that the petitioner whose name is very much disclosed in the FIR itself, was involved in the nefarious activities which were found to be prejudicial to the maintenance of 'public order'. Without looking at the statements the detaining authority cannot say whether they are irrelevant or otherwise. Therefore, that part of the statement made by the detaining authority cannot be accepted. It was incumbent upon the detaining authority to consider the statement recorded under S. 161 of the code by the police during the investigation of the offences for which the charge-sheet were already placed before him. In absence of the said statements the satisfaction arrived at by the detaining authority is vitiated and therefore, the whole order of detention is vitiated.

7. In view of the above position, I am of the opinion that the detaining authority failed to supply relevant documents to the detenu for making an effective representation which has infringed the detenu's right under Article 22 (5) of the Constitution.

8. Since the petitioner succeeds only on this point, learned advocate for the petitioner does not press any other points.

9. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 19-5-2000 passed against the detenu is hereby quashed. The petitioner-detenu Babliben Wd/o. Thakorbhai Devjibhai Patel is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

( R.P.Dholakia, J.)

\*mithabhai

